IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10473 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.M.SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10473 of 2004

MR IS SUPEHIA for Petitioner No. 1

MS REETA CHANDARANA, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 26/10/2004

ORAL JUDGEMENT

Draft amendment is allowed. The petitioner to carry out the amendment in the petition accordingly.

2. Rule. Learned AGP Ms.Reeta Chandarana, waives service of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

3. In the present petition, the petitioner has challenged the legality of the order dated 19th July 2004 by which the petitioner was reverted from the post of Senior Clerk to Junior Clerk with effect from 26.11.97 and the pay of the petitioner is ordered to be refixed accordingly and the excess payment is also ordered to be recovered from the petitioner.

4. The petitioner has stated that he was initially appointed as Junior Clerk on 28.6.65 and was thereafter promoted as Senior Clerk on 25.11.86. The petitioner had earlier along with others filed Special Civil Application No.5006 of 1998 in which, the petitioners were protected against reversion. While the said petition was pending, according to the petitioner, the respondents assured that if he withdraws himself from the petition, his grievances would be resolved. Accordingly, the petitioner filed Civil Application No.4595 of 2002 and withdrew himself from the petition. The petitioner has further submitted that instead of resolving the dispute, the respondents have passed the impugned order dated 19th July 2004 by which the petitioner is ordered to be reverted to the post of Junior Clerk with effect from 26.11.97 and excess payment is sought to be recovered.

5. Without deciding the other contentions raised by the petitioner in the petition, it is suggested by the learned advocate for the petitioner that the impugned order can be set aside only on the ground of violation of principles of natural justice since the same was passed without hearing the petitioner. The learned AGP is not in a position to controvert the factual averments made by the petitioner in this regard. It is apparent that the impugned order dated 19.7.04 would result into adverse civil consequences against the petitioner and that therefore such an order could not have been passed without giving a reasonable opportunity of being heard to the petitioner. On this ground alone, I am inclined to allow the petition.

6. In the result, the impugned order dated 19.7.04 is quashed and set aside. It will however be open to the respondents to pass fresh orders in accordance with law after giving an opportunity of being heard to the

petitioner. For the purpose of satisfying the requirements of being heard, it will be sufficient if the respondents take into account the contentions of the petitioner which he may make in his representation which may be filed within a period of three weeks from today. In the representation, it will also be open for the petitioner to agitate his demand for grant of higher pay-scale. I am sure, the respondents while considering all aspects of the matter, will also bear in mind the request of the petitioner for granting of higher pay-scale. The respondent shall dispose of the representation of the petitioner as far as possible within a period of three months from the date of its receipt.

7. With the above observations and directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)